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In the Supreme Court of the United States

OCTOBER TERM, 1983

JOSE AND FRANCISCO GARCIA, PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether 18 U.S.C. 2114, which proscribes the assault and robbery of any person having lawful custody of any "mail matter or of any money or other property of the United States," is limited to assaults on postal employees and robbery of mail matter.

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (Pet. App. 414-426) is reported at 718 F.2d 1528.

JURISDICTION

The judgment of the court of appeals was entered on November 7, 1983. The petition for a writ of certiorari was filed on January 6, 1984, and was granted on April 2, 1984. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTE INVOLVED

18 U.S.C. 2114 provides:

> Whoever assaults any person having lawful charge, control, or custody of any mail matter or of any money or other property of the United

States, with intent to rob, steal, or purloin such mail matter, money, or other property of the United States, or robs any such person of mail matter, or of any money, or other property of the United States, shall for the first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery he wounds the person having custody of such mail, money, or other property of the United States, or puts his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned twenty-five years.

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioners were convicted on multiple counts charging possession of counterfeit currency, in violation of 18 U.S.C. 474; conspiracy, in violation of 18 U.S.C. 371; stealing money of the United States, in violation of 18 U.S.C. 641; and robbing a Secret Service agent of money of the United States while putting his life in jeopardy through use of a dangerous weapon, in violation of 18 U.S.C. 2114. Jose Garcia was also convicted of resisting arrest by use of a deadly weapon, in violation of 18 U.S.C. 111.[1]

Each petitioner was sentenced to the mandatory 25-year term under 18 U.S.C. 2114 for robbing a government employee of money of the United States by placing his life in jeopardy through use of a dangerous weapon. In addition, Jose Garcia was sentenced to a consecutive 10-year term for resisting arrest, a consecutive five-year term for theft of government property, and two concurrent five-year terms for conspiracy and possession of counterfeit currency. Francisco Garcia was sentenced to concurrent five-year terms for conspiracy, theft of government property, and possession of counterfeit currency, to run consecutively to the mandatory 25-year term. The court of appeals affirmed.

[1] Francisco Garcia was acquitted on the charge of resisting arrest.

1. As summarized in the court of appeals' opinion (Pet. App. 416-419), the evidence at trial showed that on July 22, 1981, Secret Service Agent David Holmes, posing as a person interested in purchasing counterfeit money, was introduced by an informant to Ernesto Dominguez and petitioner Francisco Garcia. Holmes asked Garcia and Dominguez whether they had the counterfeit money with them, and Dominguez said it was in the trunk of a nearby car in which petitioner Jose Garcia was seated (*ibid.*; Tr. 11-14, 17). When the agent approached the vehicle, Jose Garcia responded that he was not going "to have anyone counting phony bills in this area" because the place was "sort of heated-up" (Pet. App. 417; Tr. 18). Petitioners then requested Holmes to show them the genuine currency with which he intended to make the purchase and Holmes displayed $1,800 of government money. The money was in a black pouch that had been concealed in his car. Tr. 16, 19, 76.

After Holmes returned the currency to his vehicle, Dominguez suggested that they complete the transaction at a more secure location, Bryant Park (Tr. 21). When the group reassembled at Bryant Park, Holmes was again asked to display his money (Tr. 41). Holmes refused and demanded first to see a sample of the counterfeit money; in response, Francisco Garcia gave him a counterfeit $50 bill to examine and told him that the group had $85,000 in counterfeit

currency to sell. Holmes then asked to see more (Pet. App. 417; Tr. 42-43).

At this, Jose Garcia assumed a "combat stance" and pointed a gun at Holmes. He screamed, "[e]nough of this bullshit, give me the money" (Tr. 43). Holmes then raised his arms in a predetermined distress signal and began moving toward his car, telling Jose Garcia that he was going to get the money (Tr. 43-44). Within seconds, agents who had observed Holmes' distress signal arrived and ordered Jose Garcia to drop his weapon. Garcia complied and one of the agents recovered the gun. While conducting a patdown search of Garcia's clothing, an agent found a counterfeit $100 bill (Pet. App. 417; Tr. 44, 88-91, 96-99).

As the agents converged on the scene, Francisco Garcia ran toward Holmes' car, removed the black leather pouch containing the government money, and attempted to escape on foot. However, he collided with a vehicle driven by one of the agents and dropped the pouch. A search of his person resulted in the discovery of a $50 counterfeit note. Pet. App. 418; Tr. 110-113, 117-118.

2. On appeal, petitioners claimed, inter alia, that their convictions under 18 U.S.C. 2114 were improper because that section proscribes only the assault and robbery of custodians of money or property belonging to the postal service. Expressly rejecting the contrary holdings of the Second and Ninth Circuits (see *United States* v. *Rivera*, 521 F.2d 125 (2d Cir. 1975); *United States* v. *Reid*, 517 F.2d 953 (2d Cir. 1975); *United States* v. *Fernandez*, 497 F.2d 730 (9th Cir. 1974)), the court held that "a postal nexus is not an essential element of a crime charged under section 2114" (Pet. App. 421). In particular, it reasoned (Pet. App. 419-420 (emphasis in original))

that "[t]o construe section 2114 as requiring proof of a 'postal nexus' defies the section's unambiguous wording that it encompasses the robbery of 'mail matter *or* any money or other property of the United States.'" The court also held that, even if resort to Section 2114's legislative history were necessary, the official reports of the House and Senate committees demonstrated that "both Committees understood its purpose to be 'to bring within the provisions of the Penal Code the crime of robbing or attempting to rob custodians of Government money.'" Pet. App. 420, quoting *United States* v. *Reid*, 517 F.2d at 967 (Mansfield, J., dissenting).

Finally, the court observed that "a plain language interpretation of section 2114 produces consistency among federal statutes imposing criminal punishment for robbery of a government employee" (Pet. App. 420). The court noted (*ibid.*) that several statutes—with varying penalties—proscribe the assault of federal officials and the robbery of government property. See, *e.g.*, 18 U.S.C. 111 (maximum 10-year penalty for assault of federal officer with dangerous weapon); 18 U.S.C. 2112 (maximum 15-year term for robbery of "any kind * * * of personal property belonging to the United States"). If Section 2114 is read "according to its plain and unequivocal language," all violent robberies of lawful custodians of government property—whether mail or other property—draw the same penalty (Pet. App. 420).

SUMMARY OF ARGUMENT

1. There is no dispute that the acts for which petitioners were convicted—robbery of a lawful custodian of government property that puts the victim's life in jeopardy by the use of a dangerous weapon—fall squarely within the plain language of 18 U.S.C.

2114. Accordingly, we submit that "this is a case in which the meaning of [the] statute may be determined by the admitted[ly] old-fashioned but nonetheless still entirely appropriate 'plain meaning' canon of statutory construction." *United States* v. *Clarke*, 445 U.S. 253, 254 (1980).

Section 2114 forbids all assaults on lawful custodians of "any mail matter or of any money or other property of the United States, with intent to rob, steal, or purloin such mail matter, money or other property of the United States"; it also prohibits the robbery of such persons, and, when the victim's life is put in jeopardy during a robbery or attempted robbery, prescribes a mandatory 25-year sentence. Petitioners' conduct is clearly within the ambit of the statute.

Petitioners contend that Section 2114 is not applicable because the victim was not an employee of the Postal Service and the stolen property was not "mail matter." But the statutory language contradicts any such limitation. If Congress had intended to exclude robbery of non-postal government property, it surely would not have written the statute to include lawful custodians not only of "mail matter," but also of "money, or other property of the United States." It would instead have used words of limitation, as it has in other criminal statutes designed to relate only to postal matters. On the other hand, had Congress intended the statute to have the scope found by the court of appeals, it could not have expressed such an intent more clearly than does the actual statutory language it employed.

2. Where Congress has spoken so clearly, the words of the statute should be dispositive. We need not rely solely on the plain meaning, however, because the courts of appeals' construction is also supported by the legislative history. Prior to 1935 the section now codified at 18 U.S.C. 2114 referred to assaults on "any person having lawful charge, control or custody of any mail matter, with intent to rob, steal or purloin such mail matter." It was pointed out to Congress, however, that this language created an undesirable disparity. Whereas "[a]ssaults upon custodians of mail matter are punishable [by] 25 years imprisonment if the custodian is wounded or his life is put in jeopardy by the use of a dangerous weapon," in a case where the victim was the "custodian of Government funds (not mail) the maximum punishment that can be imposed is imprisonment for not more than 10 years and a fine of $5,000." S. Rep. 1440, 74th Cong., 1st Sess. 1-2 (1935). It was to remedy this situation that Section 2114 was amended to its present form.

The reports of the House and Senate Committees both confirm that the amendment was intended to protect all lawful custodians of government property. Both reports speak in this broad language and contain no suggestion that coverage was to be restricted to postal employees.

In the face of this conclusive legislative history, petitioners point only to two brief comments from the floor debates. The first remark on which they rely focused only on consistency of language in the amendment concerning its application to both foreign and domestic mail; it had nothing to do with the issue before the Court. The second remark, although containing a passing comment seemingly supportive of petitioners' argument, was directed solely at criticism of the statute's mandatory penalty provision.

It was not intended as a comprehensive statement of the amendment's substantive reach. But even if it were, such remarks during floor debate cannot "detract from the plain thrust of [the] committee report[s]," *Zuber* v. *Allen*, 396 U.S. 168, 186 (1969), because such reports are "more authoritative" than views of individual members, *United States* v. *O'Brien*, 391 U.S. 367, 385-386 (1968).

Ultimately, the few snippets petitioners cite from the floor debates provide no basis for rejecting the statutory language as the best indication of congressional intent.

3. Our reading of Section 2114 is not only consistent with its express language, but also fits harmoniously into the fabric of federal criminal statutes. It provides a uniform punishment for all life-threatening assaults with intent to rob government officials. Punishment should not turn—as it would under petitioners' construction—on the fortuity whether the victim is a postal employee or the government property is mail matter.

4. Because no ambiguity exists on the face of the statute, because our interpretation fits comfortably into the structure of the federal criminal law, and because no serious question is raised by the legislative history, the "rule of lenity" petitioners urge has no application here. Lenity "only serves as an aid for resolving an ambiguity; it is not to be used to beget one." *Callanan* v. *United States*, 364 U.S. 587, 596 (1961).

ARGUMENT

A VIOLATION OF 18 U.S.C. 2114, PROHIBITING ASSAULTS ON PERSONS HAVING LAWFUL CUSTODY OF ANY MAIL MATTER OR OF ANY MONEY OR PROPERTY OF THE UNITED STATES, DOES NOT REQUIRE PROOF OF A POSTAL NEXUS

In this case, "[t]he plain language of the statute * * * is sufficient to resolve the question presented" (*United States* v. *Weber Aircraft Corp.*, No. 82-1616 (Mar. 20, 1984), slip op. 6).

The only question before this Court is whether 18 U.S.C. 2114, which forbids the assault or robbery of any person having lawful charge, control or custody of any mail matter or of any money or property of the United States, is limited to instances where postal employees are victimized, or whether it embraces such offenses against all lawful custodians of government money or property as well. Although acknowledging that on its face Section 2114 contains no such limitation, the Second and Ninth Circuits have held that the statute applies exclusively to offenses having some "postal nexus" or connection with the mails. See *United States* v. *Rivera*, 521 F.2d 125, 127 (2d Cir. 1975); *United States* v. *Reid*, 517 F.2d 953, 956-957 (2d Cir. 1975); *United States* v. *Rivera*, 513 F.2d 519, 531-532 (2d Cir. 1975); *United States* v. *Fernandez*, 497 F.2d 730, 739-740 (9th Cir. 1974). In the instant case, the Eleventh Circuit disagreed, holding that a construction of Section 2114 "as requiring proof of a 'postal nexus' defies the section's unambiguous wording that it encompasses the robbery of 'mail matter *or* any money or property of the United States'" (Pet. App. 419-420 (emphasis in the original; citation omitted)). See also *United States* v. *Spears*, 449 F.2d 946, 953

(D.C. Cir. 1971) (statute, as amended, includes money and other property of the United States within its coverage).

It is our submission that the decision below is correct. The construction of Section 2114 adopted by the Second and Ninth Circuits not only "defies the section's unambiguous wording" (Pet. App. 419), it derives, at most, only limited support from the Section's brief legislative history.[2]

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[2] As petitioner observes (Br. 11), in *Hanahan* v. *United States*, 414 U.S. 807 (1973), we conceded that Section 2114 was intended to embrace only postal-related crimes. In that case, Hanahan agreed that his conduct violated another statutory provision, 18 U.S.C. 2112. U.S. Memo at 3-4, *Hanahan* v. *United States, supra.* Accordingly, the government viewed the case as "one involving an erroneous citation in the indictment" and suggested that "[p]etitioner's conviction is in all respects valid * * * except that he should have been sentenced in accordance with Section 2112, which carries a maximum term of fifteen years, as opposed to the term of 25 years under 18 U.S.C. 2114" (*id.* at 4). On the basis of that concession, the Court granted the petition, vacated the judgment of the court of appeals, and remanded the case for reconsideration in light of the Solicitor General's suggestion (414 U.S. 807 (1973)).

Particularly in view of the Court's recent and repeated pronouncements that, in the absence of clearly-expressed legislative history to the contrary, the unambiguous language of a statute conclusively establishes its scope (see pages 12, 15-16, *infra*), we believe that the concession in *Hanahan* was unwarranted and that the contrary holding of the court below is correct. Moreover, unlike *Hanahan*, petitioner has not acknowledged that his conviction would be valid under Section 2112 (cf. Pet. Br. 23-24), and in some cases the resentencing option suggested by the government in *Hanahan* would not be available. See *United States* v. *Rivera*, 513 F.2d at 532-533. In any event, the fact that the government has previously taken the position that Section 2114 applies only to postal-related offenses does not preclude it from urging a more expansive

Moreover, if an interpretation that limits the applicability of Section 2114 to offenses with a postal nexus is permitted to stand, the amount of protection afforded custodians of government property against robbery or violent assaults will vary on an arbitrary basis—whether the property is in some way related to the postal service. Under petitioners' interpretation, the criminal code would subject those who commit violent robbery or attempted robbery of custodians of postal property to a mandatory 25 year term, while at the same time subjecting those who successfully complete the violent robbery of government property from non-postal employees to a maximum penalty of 15 years under 18 U.S.C. 2112 or to a 10-year term if the offense was charged as an as-

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interpretation of the statute now. See *Barrett* v. *United States*, 423 U.S. 212, 222 (1976); cf. *NLRB* v. *Local Union No. 3*, 434 U.S. 335, 351 (1978) ("[a]n administrative agency is not disqualified from changing its mind" concerning the construction of a statute). In *Young* v. *United States*, 315 U.S. 257, 258-259 (1942), the Court observed that "a confession [of error by the government] does not relieve this Court of the performance of the judicial function. * * * [O]ur judgments are precedents, and the proper administration of the criminal law cannot be left merely to the stipulation of parties." Cf. *Mariscal* v. *United States*, 449 U.S. 405, 406-407 (1981) (Rehnquist, J., dissenting).

We note also that the concession in *Hanahan* was premised on the belief that "[w]ith one exception, *United States* v. *O'Neil*, 436 F.2d 571 (C.A. 9) * * *, the statute has been used to prosecute only postal related offenses." U.S. Memo at 4, *Hanahan* v. *United States, supra.* Further research indicates, however, that such was not the case. In both *United States* v. *Sherman*, 421 F.2d 198 (4th Cir.), cert. denied, 398 U.S. 914 (1970), and *Peek* v. *United States*, 321 F.2d 934 (9th Cir. 1963), assaults on military personnel were successfully prosecuted under Section 2114.

sault with a dangerous weapon under 18 U.S.C. 111. Congress intended no such incongruous results.

A. Section 2114, On Its Face, Is Not Limited To Assaults On Custodians Of Postal Property

As this Court repeatedly has emphasized, "[i]n determining the scope of a statute, we look first to its language. If the statutory language is unambiguous, in the absence of 'a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.' *United States* v. *Turkette*, 452 U.S. 576, 580 (1981)." *Russello* v. *United States*, No. 82-472 (Nov. 1, 1983), slip op. 4.[3] Section 2114 is not even slightly ambiguous. It broadly forbids assaults on "any person having lawful charge, control or custody of any mail matter, or of any money or other property of the United States" and robbery of "any such person of mail matter, or of any money or other property of the United States." The language of the statute plainly is not limited to robbery of mail matter or assault upon postal employees. Rather, it proscribes the assault or robbery of "any person" having lawful custody of government property, and the covered property is not limited to "mail matter" but embraces "money or other property of the United States" as well.

Giving the words used by Congress "their ordinary * * * common meaning" (*Perrin* v. *United States*,

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[3] See also *Dickerson* v. *New Banner Institute, Inc.*, No. 81-1180 (Feb. 23, 1983), slip op. 7; *Albernaz* v. *United States*, 450 U.S. 333, 336 (1981); *Rubin* v. *United States*, 449 U.S. 424, 430 (1981); *CPSC* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980); *United States* v. *Apfelbaum*, 445 U.S. 115, 121 (1980); *Lewis* v. *United States*, 445 U.S. 55, 60 (1980); *United States* v. *Oregon*, 366 U.S. 643, 648 (1961).

444 U.S. 37, 42 (1979)), it is clear that petitioners robbed a lawful custodian of government property. Moreover, in doing so they placed his life in jeopardy using a dangerous weapon, thus triggering the statute's mandatory 25-year term of imprisonment. Although petitioners argue that the statute should be narrowed to exclude assaults and robberies of non-postal employees, "[n]othing on the face of the statute supports this reading of it." *United States* v. *Naftalin*, 441 U.S. 768, 772 (1979). See *Bell* v. *United States*, No. 82-5119 (June 13, 1983), slip op. 5; *Dickerson* v. *New Banner Institute, Inc.*, No. 81-1180 (Feb. 23, 1983), slip op. 8 (quoting *Lewis* v. *United States*, 445 U.S. 55, 60 (1980), and *United States* v. *Culbert*, 435 U.S. 371, 373 (1978)).

Petitioners do not appear to challenge the natural reading of the statutory language other than to suggest (Br. 16 n.4, 20) that the use of the disjunctive ("mail matter or * * * any money or property of the United States") somehow introduces a measure of uncertainty. This unexplained contention is difficult to fathom. This Court stated in *United States* v. *Naftalin*, 441 U.S. at 774 (footnotes omitted):

> As is indicated by the use of * * * the conjunction "or" at the end of the first two [subsections], each subsection proscribes a distinct category of misconduct. Each succeeding prohibition is meant to cover additional kinds of illegalities —not to narrow the reach of the prior sections. See *United States* v. *Birrell*, 266 F. Supp. 539, 542-543 (SDNY 1967). There is, therefore, "no warrant for narrowing alternative provisions which the legislature has adopted with the pur-

> pose of affording added safeguards." *United States* v. *Gilliland*, 312 U.S. 86, 93 (1941).

See *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979), quoting *FCC* v. *Pacifica Foundation*, 438 U.S. 726, 739-740 (1970) ("[c]anons of construction ordinarily suggest that terms connected by [the] disjunctive be given separate meanings"). In a criminal statute the use of a disjunctive provides a clear indication that it can be violated by alternative means. See Pet. App. 420; *United States* v. *Lane*, 464 F.2d 593, 595 (8th Cir.), cert. denied, 409 U.S. 876 (1972); see also *United States* v. *Snider*, 502 F.2d 645, 655 (4th Cir. 1974). Because its prohibitions are written in the disjunctive, Section 2114 must be read to prohibit assaults or robberies of the custodians either of "mail matter" or, alternatively, of "money or other property of the United States." As the court below observed (Pet. App. 420):

> [T]he specific use of the disjunctive "or" after the comma [following the phrase "mail matter" and before the phrase "any money or other property of the United States"] demonstrates that Congress intended section 2114 to apply not only to robbery of "mail matter" but to money or other property held by an authorized person.

The "strained construction" of the statute advanced by petitioners, which limits its scope to offenses against custodians of mail matter, "would have [the Court] ignore the disjunctive 'or' and rob the term [other] 'property' [of the United States] of its independent and ordinary significance." *Reiter* v. *Sonotone Corp.*, 442 U.S. at 338-339.

Petitioners' second challenge to the statute's plain meaning is that the words Congress selected were not faithful to its intent. We deal below with petitioners' discussion of the legislative history (pages 18-30, *infra*). For the moment we need observe only that petitioners' argument proceeds from the mistaken premise that even if the statutory language leaves no room for doubt, the legislative history may be employed as a tool for generating uncertainty. Such an inverted approach to statutory construction is contrary to this Court's teaching that we must "'start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used [in the statute],' *Richards* v. *United States*, 369 U.S. 1, 9 (1962)." *Russello* v. *United States*, slip op. 4; *United States* v. *Rodgers*, No. 83-620 (Apr. 30, 1984), slip op. 4. This is so, not because the statutory language is the sole source for ascertaining the legislative purpose, but because the actual wording on which both houses of Congress agreed is "the most reliable evidence" of legislative intent. *United States* v. *Turkette*, 452 U.S. at 593. See *United States Railroad Retirement Board* v. *Fritz*, 449 U.S. 166, 179 (1980) (this Court has "historically assumed that Congress intended what it enacted").[4] Accordingly, where "[n]othing on the

[4] Where, as in this case, the language of the statute in question is clear and unequivocal there is no need to resort to its legislative history. *United States* v. *Oregon*, 366 U.S. 643, 648 (1961); see, *e.g.*, *Ex parte Collett*, 337 U.S. 55, 61 (1949); *Helvering* v. *City Bank Co.*, 296 U.S. 85, 89 (1935); *United States* v. *Shreveport Grain & Elevator Co.*, 287 U.S. 77, 83 (1932); see also *Rubin* v. *United States*, 449 U.S. at 430. The Court has stated (*Caminetti* v. *United States*, 242 U.S. 470, 490 (1917)):

> * * * when words are free from doubt they must be taken as the final expression of the legislative intent, and are not to be added to or subtracted from by considerations drawn from titles or designating names or

face of the statute suggests a congressional intent to limit its coverage'" (*Dickerson* v. *New Banner Institute, Inc.*, slip op. 8, quoting *Lewis* v. *United States*, 445 U.S. at 60, and *United States* v. *Culbert*, 435 U.S. at 373), there is no need to go further in determining the statute's scope. Thus, "[t]he short answer [to petitioners' argument] is that Congress did not write the statute that way." *Russello* v. *United States*, slip op. 7, quoting *United States* v. *Naftalin*, 441 U.S. at 773.

Indeed, had Congress intended to limit Section 2114 to postal-related crimes, it surely knew how to say so. As Judge Mansfield noted in his dissent in *United States* v. *Reid*, 517 F.2d at 969, Congress has repeatedly enacted laws limited in their scope to "mail," "letters," or "packets," 18 U.S.C. 1693, 1694, 1695, 1696, 1698, 1700, 1701, 1703; a "post office or any authorized depository for mail matter," 18

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reports accompanying their introduction, or from any extraneous source. In other words, the language being plain, and not leading to absurd or wholly impracticable consequences, it is the sole evidence of the ultimate legislative intent.

Although there is no "rule of law" that forbids recourse to other aids to construction, see, *e.g.*, *United States* v. *American Trucking Associations*, 310 U.S. 534, 543-544 (1940); 2A C. Sands, *Sutherland Statutory Construction* § 48.01, at 182 (4th ed. 1973), "[w]hen the terms of a statute are unambiguous, our inquiry comes to an end, except 'in rare and exceptional circumstances.'" *Howe* v. *Smith*, 452 U.S. 473, 483 (1981) (quoting *TVA* v. *Hill*, 437 U.S. 153, 187 n.33 (1978), and *Crooks* v. *Harrelson*, 282 U.S. 55, 60 (1930)). Here, it assuredly cannot be said that the "clearly expressed legislative intent" (*Russello* v. *United States*, slip op. 4) of Section 2114 is so contrary to its unambiguous language as to require that its plain meaning be disregarded (see page 30, *infra*).

U.S.C. 1702; a "letter box," "mail receptacle" or "authorized depository for mail matter," 18 U.S.C. 1706; "property used by the Post Office Department," 18 U.S.C. 1707; "postal funds," 18 U.S.C. 1711; a "letter or mail carrier," 18 U.S.C. 1702; and a "postmaster" or "Postal Service Employee," 18 U.S.C. 1709.

If Congress had, likewise, intended to limit the scope of Section 2114 as petitioners propose, it need simply have added the phrase "of the Post Office Department" after the phrase "any money or other property," or substituted the term "postal employee" for the phrase "any person."[8] See *United States* v. *Yermian*, No. 83-346 (June 27, 1984), slip op. 9-10; *United States* v. *Turkette*, 452 U.S. at 581. Instead, however, it selected language that broadly extended its reach to assaults or robberies of anyone who is the custodian of "any money or other property of the

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[8] Petitioners' effort to inject a "postal nexus" element points up a fundamental inconsistency in their interpretation of Section 2114. Thus, they appear to argue that the postal nexus is satisfied where the victim is an employee of the Postal Service or where a non-postal employee is robbed of mail matter. But this construction would mean that the application of the statutory phrase "money or other property of the United States" would vary from case to case with no consistency: *e.g.*, "money or other property" would include currency if stolen from a postal worker, but not from a Secret Service agent. Petitioners' approach would also burden the phrase "any person having lawful charge, control, or custody" with a similar inconsistency: *e.g.* a Secret Service agent would be such a legal custodian if he was robbed of "mail matter," but not if he was robbed of "money or other property of the United States."

On the other hand, the decision of the court of appeals avoids these anomalies and promotes the consistency that is apparent on the face of the statute.

United States." It is beyond question that, by using a pistol in an effort to rob Agent Holmes of money belonging to the United States, petitioners committed an act falling squarely within this unambiguous language and that the terms of the statute fully apprised them that such conduct was prohibited.

B. The Legislative History Does Not Support An Interpretation Of Section 2114 That Is Contrary To Its Plain Language

Petitioners do not seriously dispute that Section 2114 literally prohibits assaults not only upon custodians of mail matter but upon the custodians of any other money or property of the United States as well (see Br. 16 n.4). They argue instead that the legislative history does not demonstrate that Congress intended the statute to embrace non-postal crimes. Even if that were the case, the silence of the legislative history would not alter the plain meaning of the terms used by Congress. As this Court noted in *Harrison* v. *PPG Industries, Inc.*, 446 U.S. 578, 592 (1980):

> [I]t would be a strange canon of statutory construction that would require Congress to state in committee reports or elsewhere in its deliberations that which is obvious on the face of a statute. In ascertaining the meaning of a statute, a court cannot, in the manner of Sherlock Holmes, pursue the theory of the dog that did not bark.[6]

If the legislative history of a statute unequivocally demonstrated an intent contrary to the ordinary meaning of the statutory language, a difficult question of construction would be presented, and a refusal to construe the statute literally might well be justified. Here, however, as Judge Mansfield noted in his dissent in *United States* v. *Reid*, 517 F.2d at 969, if anything, the pertinent legislative history "reinforces the statute's plain, unequivocal language."

1. Section 2114 had its origin in the Act of Feb. 20, 1792, ch. 7, § 1, 1 Stat. 232, prohibiting larceny of the mail and robbery of the mail from a carrier, and an amendment to that statute that prohibited attempts to rob a mail carrier by assault with a dangerous weapon. Act of Mar. 2, 1799, ch. 43, § 15, 1 Stat. 736; see *United States* v. *Spears*, 449 F.2d 946, 950-952 (D.C. Cir. 1971).[7] Following codification of the entire United States Penal Code in 1909, the statute, which was contained in the section of the Criminal Code entitled "Offenses Against Postal Service," read as follows:

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[6] See *Standefer* v. *United States*, 447 U.S. 10, 20 n.12 (1980) ("It is not necessary for Congress in its committee reports to identify all of the 'weeds' which are being excised from the garden.").

[7] The 1799 Act provided (§ 15, 1 Stat. 736):

> [I]f any person shall rob any carrier of the mail of the United States, or other person entrusted therewith, of such mail, or of part thereof, such offender or offenders shall, on conviction, be publicly whipped * * * and be imprisoned not exceeding ten years; and if convicted a second time of a like offence, he or they shall suffer death: or if in effecting such robbery of the mail, the first time, the offender much [sic] wound the person having custody thereof, or put his life in jeopardy, by the use of dangerous weapons, such offender or offenders shall suffer death. And if any person shall attempt to rob the mail of the United States, by falling upon the person having custody thereof, shooting at him or his horses, or threatening him with dangerous weapons, and the robbery is not effected, every such offender, on conviction thereof, shall be punished by whipping, not exceeding thirty lashes, or with imprisonment, not exceeding two years, or with both * * *.

> Whoever shall assault any person having lawful charge, control or custody of any mail matter with intent to rob, steal or purloin such mail matter or any part thereof or shall rob any such person of such mail or any part thereof, shall for a first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery, he shall wound the person having custody of the mail, or put his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned twenty-five years.

Act of Mar. 4, 1909, ch. 321, § 197, 35 Stat. 1126. See 18 U.S.C. (Supp. V 1939) 320. As did its precursors, the statute proscribed assaults or robbery only of persons having "charge, control or custody of any mail matter."

That prohibition was broadened to its present form in 1935. On February 20 of that year the Postmaster General wrote a letter to the Chairman of the House Committee on the Post Office and Post Roads. See S. Rep. 1440, 74th Cong., 1st Sess. 1-2 (1935). The letter observed:

> Assaults upon custodians of mail matter are punishable under section 197 of the Federal Penal Code (18 U.S.C. 320), which provides a penalty of 25 years' imprisonment if the custodian is wounded or his life is put in jeopardy by the use of a dangerous weapon. If the person assaulted is a custodian of Government funds (not mail) the maximum punishment that can be imposed is imprisonment for not more than 10 years and a fine of not more than $5,000; and no penalty is provided for attempts to commit such crimes. Recent years have witnessed a substantial increase in crimes of the latter type

> and it is believed that section 197 of the Penal Code should be amended so as to bring within its provisions the crime of robbing or attempting to rob custodians of Government moneys.

As a result of this communication and the recommendations of the House and Senate Post Office Committees, Congress amended the statute to its present form by adding the phrase "or of any money or other property of the United States" after the words "any mail matter." See Act of Aug. 26, 1935, ch. 694, 49 Stat. 867.

Although the legislation was initiated at the request of the Postmaster General, and considered by both the House and Senate Post Office Committees, neither the initiating request nor the committee reports contain any suggestion that the amendment was limited to postal employees or to custodians of money or property connected with the mails. To the contrary, the Postmaster General's letter voiced concern that, whereas assaults upon the custodians of mail matter by means of a dangerous weapon or which resulted in injury or a threat to life carried a mandatory 25 year sentence, similar assaults upon the custodians of government funds not connected with the mail were subject to a maximum sentence of only ten years. He therefore recommended without qualification that "the Penal Code should be amended so as to bring within its provisions the crime of robbing or attempting to rob custodians of government moneys."

The bill was described in similar terms by the House committee (as legislation "Safeguarding Custodians of Government Moneys and Property," H.R. Rep. 582, 74th Cong. 1st Sess. 1 (1935)), and in the Senate report (as legislation "Providing for Punish-

ment for the Crime of Robbing or Attempting to Rob Custodians of Government Moneys or Property." S. Rep. 1440, *supra*, at 1). Both reports quoted verbatim the Postmaster General's letter and, using identical language, explained that "[t]he purpose of the pending bill is to bring within the provisions of the Penal Code the crime of robbing or attempting to rob custodians of Government moneys." H.R. Rep. 582, *supra*, at 1; S. Rep. 1440, *supra*, at 1. When the amendment was passed by Congress, it captioned the legislation: "An Act [p]roviding for punishment for the crime of robbing or attempting to rob custodians of Government moneys or property" (see 49 Stat. 867).

These sources provide authoritative pronouncements of congressional intent to protect all custodians of government money or property, by making "an assault upon *any* custodian of *any* government property • • • equally punishable," *United States* v. *Reid*, 517 F.2d at 970 (Mansfield, J., dissenting; emphasis in original). In contrast, the cramped reading of the statute proposed by petitioners would frustrate the objective expressed in both committee reports. See H.R. Rep. 582, *supra*, at 1.[8]

[8] In his majority opinion in *United States* v. *Reid*, *supra*, Judge Friendly offers two further comments on the legislative history. We submit that neither is persuasive. First, Judge Friendly notes (517 F.2d at 957 n.3a) that "the 1935 amendment was to a statute which stood in the chapter of the Criminal Code dealing with offenses against the postal service." From this he concluded (*ibid.*) that "[n]o Congressman could have supposed that, in passing an amendment to that section proposed by the Postmaster General and recommended by the committees dealing with the postal service, he was creating a new crime with respect to government property generally." To the contrary, where the proposed language does not even hint at a "postal nexus" limitation and the committee reports are just as broad as the amendment's plain meaning, it is far more likely that members of Congress looked at the language on which they were voting than at the caption of the chapter in which it was contained. Indeed, given the breadth of the language, one can state with greater assurance that no congressman could have supposed that in passing an amendment covering all lawful custodians of money or other Government property he was, without so stating, limiting his action to postal crimes. See *Albernaz* v. *United States*, 450 U.S. at 342: "It is not a function of this Court to presume that 'Congress was unaware of what it accomplished . . . .'" (quoting *United States Railroad Retirement Board* v. *Fritz*, 449 U.S. at 179). See also page 30 n.13, *infra*.

Judge Friendly also adverted (517 F.2d at 957-958 n.5) to subsequent commentaries that refer to Section 2114 as dealing with the mail (*Final Report of the National Commission on Reform of Federal Criminal Laws* § 201 comment at 15 (1971); *Reform of the Federal Criminal Laws: Hearings Before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary*, 92d Cong., 1st Sess., Pt. 1, at 21, 36 (1971)). Section 2114 does, of course, "deal with the mails," but neither of these sources contradicts the proposition that its coverage extends further. In any event, " 'the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.' " *CPSC* v. *GTE Sylvania, Inc.*, 447 U.S. at 117-118 (quoting *United States* v. *Price*, 361 U.S. 304, 313 (1960)); see *United States* v. *Clark*, 445 U.S. 23, 33 n.9 (1980); *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 132 (1974); *United States* v. *United Mine Workers*, 330 U.S. 258, 281-282 (1947).

2. Disregarding the broad language contained in the Postmaster General's letter and the committee reports of both houses, petitioners rely (Br. 20-21) exclusively upon two remarks by a single congressman, Donald Dobbins, during the floor debates to support their view that the amendment was intended to cover assaults or robberies only of custodians of

postal moneys or property. When these comments are read in context, however, it is clear that Representative Dobbins was responding to specific criticisms unrelated to the issue before this Court, and in neither instance was he offering a comprehensive description of the statute's scope.

The first remark by Representative Dobbins answered Representative Wolcott's objection that the draft amendment's phraseology was inconsistent. Representative Wolcott pointed out that the portion of the draft addressing the assailant's intent had been amended to read "any mail matter *or of any* money or property of the United States," whereas other portions omitted the words "of any" and referred only to "mail matter, money or other property of the United States" (79 Cong. Rec. 7875 (1935) (emphasis added)). He suggested that, for the sake of consistency, the words "or of any" should precede all references to "money or property of the United States." *Ibid.* Representative Dobbins, a member of the House Committee on the Post Office and Post Roads,[9] first responded (*ibid.*) that no inconsistency

[9] The legislative history of the statute does not show, as petitioners now maintain (Br. 20), that Representative Dobbins was floor manager of the legislation. In any event, even the fact that he was a member of the committee responsible for formulating the legislation would not provide a basis for allowing his comments to override the committee report (see pages 21-22, *supra*, and pages 28-30, *infra*) and the clear and unambiguous language of the statute. See *Railroad Commission* v. *Chicago B. & Q. R.R.*, 257 U.S. 563, 589 (1922); 2A C. Sands, *Sutherland's Statutory Construction* § 48.14, at 220 (4th ed. 1973); see also *Weinberger* v. *Rossi*, 456 U.S. 25, 35 n.15 (1982) ("[t]he contemporaneous remarks of a sponsor of legislation are certainly not controlling in analyzing legislative history"); *CPSC* v. *GTE Sylvania, Inc.*, 447 U.S. at 118 (same); *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 311 (1979)

existed because the bill's use of the word "such" effectively incorporated the same antecedent throughout. He added (*ibid.*):

> The trouble with the language as originally written "custody of any mail matter, money, or other property of the United States" is that it might limit the offense to mail matter of the United States, whereas it is designed to include within the protection of the section all mail matter, whether it belongs to the United States or is mail belonging to a private citizen and is temporarily in the custody of the United States while being in the United States mails.

Following this colloquy, Representative Dobbins stated (*ibid.*) that he had no objection to the Wolcott suggestion, and, upon the House Post Office Committee's recommendation, the section's introductory phrase was amended by addition of the words "or of any" preceding the word "money." See H.R. Rep. 582, *supra*, at 1-2; 79 Cong. Rec. 9380 (1935).

This sequence of events belies petitioners' contention (Br. 20) that the term "or" was "only used because of the Committee's desire to increase the scope of the original bill to include foreign mail." To the contrary, even prior to the committee's amendment, the bill was written in the disjunctive and contemplated three distinct categories of protected government property: "mail matter," "money" and "other property of the United States." The "or of any" language was added in one clause before the

(same). In this case, if the sole purpose of the 1935 amendment was to extend its protection to non-mail *postal* property, it would have been a simple matter for the committee of which Representative Dobbins was a member to have so limited it.

word "money," at Representative Wolcott's suggestion, merely to attain consistency with another portion of the draft legislation and not to achieve any substantive change. Nothing in Representative Dobbins' remarks suggests that he was addressing the scope of the terms "money" and "other property of the United States". Rather, he was commenting solely on the question whether the term "mail matter" embraced not only domestic mail but also mail belonging to a foreign citizen that is temporarily in the custody of the postal service. Accordingly, these remarks of Representative Dobbins are totally irrelevant to the issues in this case.

The second statement upon which petitioners rely occurred during further debate on May 24, 1935, when Representatives Wolcott and Truax objected to the provision of the bill imposing a mandatory 25-year sentence for wounding a custodian of government property or using a weapon in committing an enumerated offense (79 Cong. Rec. 8205). Responding to a rhetorical inquiry by Representative Truax why such a penalty should not also apply "to the burglar who enters a person's home" (*ibid.*), Representative Wolcott stated (*ibid.* (emphasis added)):

> I doubt whether the Federal Government would have jurisdiction to enact legislation making it a felony to enter a person's home for the purpose of committing burglary or any other offense. *This bill is confined to assaults on Federal law-enforcement officers.* For that reason, I have no objection to it. I do not want to see them federalize all the criminal laws of the States and this bill does not do it; it merely amends existing law with respect to assault with intent to commit robbery.

Representative Dobbins then discussed the discrete objection to the mandatory nature of the penalty (*ibid.*):

> Mr. Speaker, the gentleman from Ohio objects to the 25-year penalty provided in this bill. The penalty clause is not new legislation. If this bill is not passed, the statute will still contain the mandatory 25-year penalty.
>
> The only purpose of the pending bill is to extend the protection of the present law to property of the United States in the custody of its postal officials, the same as it now extends that protection to mail matter in the custody of postal officials. Aside from that, it makes no change in the law. It just includes property of the United States in addition to mail matter which is protected; and let me say there are many custodians of postal stations who have a great amount of money in their custody but little mail; for instance, in those substations where money orders are sold. If a bandit attacks those employees seeking that money, there is no way to prosecute the bandit under the present law, but if he is merely after a postal card or a letter he can be prosecuted.

Although Representative Dobbins' observation about the "purpose of the pending bill" might appear to support petitioners' claim that the legislation was intended to embrace only postal matter,[10] it cannot carry the day for them in the face of the numerous

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[10] Both the courts in *United States* v. *Rivera*, 513 F.2d at 531-532 n.18, and in *United States* v. *Fernandez*, 497 F.2d at 740, placed heavy reliance upon Representative Dobbins' statement in holding that Section 2114 applies only to property having some nexus with the Postal Service.

and weighty considerations supporting the court of appeals' decision.

Viewed in its proper context, Representative Dobbins' remarks do not sustain petitioners' broad conclusions. The statement was, after all, not made for the purpose of explicating the scope of the statute, but rather to defend its penalty provisions.[11] Moreover, even if those comments during the floor debates are construed as supporting petitioners' view of the statute, there is no occasion for concluding that Congress's desire to protect postal workers was its *sole* purpose. See, *e.g.*, *United States* v. *Naftalin*, 441 U.S. at 774-776; *United States* v. *Culbert*, 435 U.S. at 377.

This Court has often noted that a statement made during floor debates, even by the floor manager of the legislation, reflects at best only the understanding of an individual member and "is not impressive legislative history." *Zuber* v. *Allen*, 396 U.S. 168, 186-187 (1969).[12] By contrast, "[a] committee report represents the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation." *Ibid.* As Justice Jackson explained in his concurrence in *Schwegmann Bros.* v. *Calvert Corporation*, 341 U.S. 384, 395-396 (1951):

> Resort to legislative history is only justified where the face of the Act is inescapably ambiguous, and then I think we should not go beyond committee reports, which presumably are well considered and carefully prepared. * * *. [T]o select casual statements from floor debates, not always distinguished for candor or accuracy, as a basis for making up our minds what law Congress intended to enact is to substitute ourselves for the Congress in one of its important functions.

See *United States* v. *O'Brien*, 391 U.S. 367, 385-386 (1968) (in examining legislative purpose, committee reports are "more authoritative" than views of individual committee members during floor debates); compare *Simpson* v. *United States*, 435 U.S. 6, 13-14 (1978) (remarks from sponsor of floor amendment entitled to weight because the statement was in accord with the legislative rationale underlying the statute at issue; because the amendment was introduced on the floor of the House, there were no relevant passages regarding that portion of the statute in the congressional reports).

Here, the authoritative committee reports of both houses, including the House committee of which Representative Dobbins was a member, were contrary to his somewhat offhand comment concerning the scope of the amendment. Particularly because his statement was made in response to criticism concerning the statute's sentencing provision rather during a colloquy focusing upon its scope, it is plainly not the sort of "extensive and thoughtful debate [such as would] detract from the plain thrust of [the] committee report[s] in this instance" (*Zuber* v. *Allen*,

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[11] Representative Wolcott had expressed his criticism in these terms (79 Cong. Rec. 8205 (1935)): "I think it is a very bad way to leave legislation, making it mandatory upon a judge to give a particular sentence, and no more and no less. If the committee wants it that way, however, I have no objection."

[12] In *Zuber* the Court minimized the significance of Senator Murphy's remarks concerning the purpose of the Agricultural Adjustment Act of 1937 despite the fact that he was floor manager of the legislation (396 U.S. at 203) (Black, J., dissenting) because, inter alia, they differed from the "plain thrust" of the committee report (*id.* at 186).

396 U.S. at 186). Indeed, the importance of Representative Dobbins' remarks is further diminished by the fact that, during the floor debate, Representative Wolcott expressed the substantially different view that the bill embraced assaults on all "Federal law enforcement officers" and "amends existing law with respect to assault with intent to commit robbery." 79 Cong. Rec. 8205 (1935).

In short, given the broad objective of the amendment articulated in both the committee reports and Representative Wolcott's remarks, Congressman Dobbins' contrary statement clearly does not constitute the type of compelling legislative history that is sufficient "to make plain the intent of Congress that the letter of the statute is not to prevail." *TVA* v. *Hill*, 437 U.S. 153, 187 n.33 (1978); see also *Regan* v. *Wald*, No. 83-436 (June 28, 1984), slip op. 14 ("[t]o permit * * * clear statutory language to be materially altered by such colloquies, * * * would open the door to the inadvertent * * * undermining of the language * * * voted on by Congress and signed into law by the President"); *Russello* v. *United States*, slip op. 4.[13]

[13] It has been suggested (*Reid*, 517 F.2d at 957 & n.3a; see page 22 note 8, *supra*), that in 1935, Section 2114 was contained in the chapter of the Criminal Code dealing with the postal service and therefore, Congress intended to limit the statute to postal offenses. But, as noted in the *Reid* dissent (517 F.2d at 964), prior to its 1948 revision the Penal Code did not have any subdivisions classifying crimes in broad general terms such as embezzlement, theft, homicide and fraud. There was, therefore, simply no more general category in which the section, as amended in 1935, could have been placed. When the Penal Code was recodified in 1948, the statute was placed in a chapter designated "Robbery and Burglary" (18 U.S.C. (Supp. III 1950) 2111 *et seq.*) despite the fact that the code contained another chapter designated "Postal Service" (18 U.S.C. (Supp. III 1950) 1691 *et seq.*). Although the revisers' action "did not expand the meaning Congress had entertained in 1935" (*United States* v. *Reid*, 517 F.2d at 957), by the same token, it surely demonstrates that the earlier placement of the statute in the Section entitled "Offenses Against the Postal Service" is of no particular significance for ascertaining its scope.

C. A Construction Of Section 2114 That Requires Proof Of A "Postal Nexus" Would Result In An Unreasonable Disparity Between The Protection Afforded Custodians Of Postal Property And Custodians Of Other Government Money Or Property Not Connected With The Mails

A fundamental rule of statutory construction is that "[s]tatutes should be interpreted to avoid untenable distinctions and unreasonable results whenever possible." *American Tobacco Co.* v. *Patterson*, 456 U.S. 63, 71 (1982); see 2A C. Sands, *Sutherland Statutory Construction* § 45.12, at 37 (4th ed. 1973). In this respect, as Judge Mansfield observed in his dissent in *United States* v. *Reid*, 517 F.2d at 970, reading Section 2114 according to its plain and unequivocal language establishes consistency in federal statutes dealing with crimes of violence against custodians of government property and protects all lawful custodians of such property on an equal basis without making arbitrary distinctions depending upon the character of the property involved.

Petitioners observe (Br. 19) that, at the time Section 2114 was amended to its present form, another statute (now codified at 18 U.S.C. 2112),[14] prohibited robbery of government property; they suggest that an amendment to Section 2114 embracing offenses against the custodians of non-postal government prop-

[14] 18 U.S.C. 2112 provides:

> Whoever robs another of any kind or description of personal property belonging to the United States, shall be imprisoned not more than fifteen years.

erty would therefore have been redundant.[15] The two statutes, however, are substantially different in the nature of the conduct prohibited; and, because of the disparity in potential sentences, they differ in the protection afforded the custodians of government property as well.

Section 2114 prohibits assault of the legal custodian of government property with intent to rob; it also prohibits robbery of such person; and, it authorizes an enhanced penalty for recidivists and for persons who commit robbery or attempted robbery if the defendant "wounds the person having custody" of government property "or puts his life in jeopardy by the use of a dangerous weapon." By contrast, Section 2112 prohibits only simple robbery of any person—whether a lawful custodian or not—"of any kind or description of personal property belonging to the United States."[16] Thus, Section 2112 affords pro-

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[15] Of course, if petitioners are correct then Section 2114 would have been redundant even for postal employees because Section 2112 already covered certain offenses against them. Clearly something more was intended in the amendment to Section 2114.

[16] It is apparent from the legislative history of Section 2112 that it was not intended by Congress to afford any specific protection against robbery to lawful custodians of government property such as Agent Holmes. Section 2112 had its genesis in the Act of Mar. 2, 1867, ch. 193, 14 Stat. 557. The original House version of the legislation, H.R. 604, 39th Cong., 2d Sess. (1867), was merely a bill defining and punishing "the robbery and larceny of United States securities and to punish the malicious obstruction of any railway on which are trains containing mail matter or other freight belonging to the Government." See Cong. Globe, 39th Cong., 2d Sess. 1246 (1867). The Senate, however, proposed amending the bill to read as follows (*id.* at 1225):

> That if any person shall rob another, lawfully in the custody thereof, of any kind or description of personal property belonging to the United States, or shall feloniously take and carry away the same, the person so offending shall, on conviction, be punished by fine not exceeding $5,000, or by imprisonment at hard labor not less than one nor more than ten years, or by both, at the discretion of the court.

Following objection to this amendment in the House (*id.* at 1246), a conference committee agreed to its adoption but with elimination of the phrase "lawfully in the custody thereof" (*id.* at 1758), and the bill was signed into law in that form (*id.* at 1977, 1982). Such action made clear that, in enacting the legislation, Congress did not intend to afford any particular protections to government employees. By contrast, Section 2114 was expressly enacted into law to protect against crimes of violence against any person having "lawful charge, control, or custody of any mail matter, *money, or other property of the United States,*" rather than merely to prevent misappropriation of the property itself. See H.R. Rep. 582, *supra*, at 1 (emphasis in original).

tection only for a consummated robbery, while Section 2114 provides additional protection from attempted robbery accompanied by an assault or use of a weapon. If Section 2114 were limited to postal-related crimes, there would be no particularized punishment for assaults on lawful custodians of other government property with intent to rob, or for life-threatening attempted robberies of such persons.[17]

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[17] It is true that assaults on certain government officials are prohibited by 18 U.S.C. 111, if the victim is among those enumerated in 18 U.S.C. 1114 (which now includes all employees of the Postal Service, but which in 1935 included only postal inspectors, see Pub. L. No. 90-449, 82 Stat. 611 *et seq.*). 18 U.S.C. 111 provides:

> **Assaulting, resisting, or impeding certain officers or employees**
>
> Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account

Petitioners' contention, based on the overlap of other provisions, fails in any event because the application of Section 2114 to their conduct is unaffected by the fact that other federal criminal statutes may also apply. While Section 2114 complements the protection afforded and penalties authorized by other statutes, as this Court repeatedly has recognized, statutory overlap is neither unusual nor unfortunate. See *Edwards* v. *United States*, 312 U.S. 473, 484 (1941) ("[t]he two [statutes] can exist and be useful, side by side"); *United States* v. *Naftalin*, 441 U.S. at 777-778 ("[The defendant] is undoubtedly correct that the two Acts prohibit some of the same conduct * * *. [But that] certainly does not absolve [him] of guilt for the transactions which violated the statute under which he was convicted."); *SEC* v. *National Securities Inc.*, 393 U.S. 453, 468 (1969) ("The fact that there may well be some overlap is neither unusual nor unfortunate."); see generally *United States* v. *Batchelder*, 442 U.S. 114, 123-124 (1979).

Moreover, as the court below observed (Pet. App. 420), if Section 2114 is read according to its plain and unequivocal language, it achieves consistency among federal criminal statutes. All violent robberies or attempted robberies of government employees, whether of mail or other government property, result in the same 25-year mandatory penalty. By

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of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

But even in cases where Section 111 is applicable, it provides no additional punishment where the assault was committed with intent to rob. Only Section 2114 addresses this point.

contrast, the interpretation proposed by petitioners results in a mandatory 25-year term for robberies or attempted violent robberies only of postal employees, while even successful robberies of other government workers would trigger only a maximum penalty of 15 years under 18 U.S.C. 2112, or 10 years if the offense is charged as an assault with a dangerous weapon under 18 U.S.C. 111.[18]

There is no suggestion in the statute's language or its legislative history that Congress intended such arbitrary distinctions. Rather, common sense impels the conclusion that, as plainly stated in the statute it enacted, Congress intended the amendment to Section 2114 to protect custodians of both postal and non-postal government property in like fashion.

D. The Rule Of Lenity Has No Application In The Absence Of Any Statutory Ambiguity

Because petitioners' construction of the statute does not comport with its plain meaning or legislative history, there is no basis for their contention (Br. 13-14) that the "rule of lenity" calls for Section 2114 to be restricted to postal-related crimes. See *Bifulco* v. *United States*, 447 U.S. 381, 387 (1980) ("The Court has emphasized that the 'touchstone' of the rule of lenity is 'statutory ambiguity.'"). The rule of lenity is not applicable unless there is a "grievous

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[18] It is of course possible that a defendant who uses a deadly weapon in a consummated robbery of a government official could be charged under both Sections 111 and 2112 and would face a maximum aggregated sentence of 25 years. But in that event the actual sentence would be left to the discretion of the trial judge and the term of imprisonment could be shorter than the 25 years mandated by Section 2114. Moreover, since Section 2112 applies only to consummated robberies, it does not include the crime of attempted robbery that is embraced by Section 2114.

ambiguity or uncertainty in the language and structure of the Act" (*Huddleston* v. *United States*, 415 U.S. 814, 831 (1974)), such that even "[a]fter [a court has] 'seize[d] everything from which aid can be derived * * *' [it is still] left with an ambiguous statute." *United States* v. *Bass*, 404 U.S. 336, 347 (1971) (quoting *United States* v. *Fisher*, 6 U.S. (2 Cranch) 358, 386 (1805)). See *United States* v. *Yermian*, No. 83-346 (June 27, 1984), slip op. 6 n.7; *McElroy* v. *United States*, 455 U.S. 642, 658 (1982). Lenity "only serves as an aid for resolving an ambiguity; it is not to be used to beget one. * * * The rule comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers." *Callanan* v. *United States*, 364 U.S. 587, 596 (1961). And, as the Court observed in *United States* v. *Moore*, 423 U.S. 122, 145 (1975), quoting *United States* v. *Brown*, 333 U.S. 18, 25-26 (1948) (brackets in original):

> The canon in favor of strict construction [of criminal statutes] is not an inexorable command to override common sense and evident statutory purpose . . . . Nor does it demand that a statute be given the "narrowest meaning"; it is satisfied if the words are given their fair meaning in accord with the manifest intent of the lawmakers.

For the reasons we have discussed, there is no ambiguity here. Section 2114 fits harmoniously into the fabric of federal criminal law; it does not produce a result "so 'absurd or glaringly unjust'" (*United States* v. *Rodgers*, slip op. 9, quoting *Sorrells* v. *United States*, 287 U.S. 435, 450 (1932)) as to call in question Congress's intent; and its legislative

history does not reveal "'a clearly expressed legislative intent to the contrary.'" *Dickerson* v. *New Banner Institute*, slip op. 7 (quoting *United States* v. *Turkette*, 452 U.S. at 580, and *CPSC* v. *GTE Sylvania, Inc.*, 447 U.S. at 108). In short, it would be an unwarranted intrusion on the statutory scheme Congress enacted for Section 2114 to be limited as petitioners propose. See *Albernaz* v. *United States*, 450 U.S. at 342; *United States Railroad Retirement Board* v. *Fritz*, 449 U.S. at 179; *United States* v. *Turkette*, 452 U.S. at 587 ("[t]here is no argument that Congress acted beyond its power * * *. That being the case, the courts are without authority to restrict the application of the statute"). See *United States* v. *Culbert*, 435 U.S. at 379-380.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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